

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 797 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy of the judgement? No

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4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? Yes

STATE OF GUJARAT

Versus

Appearance:

Mr.S.R.Divetia, Addl.Public Prosecutor for State of Gujarat.

No one appears for the respondent despite service.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 09/09/96

ORAL JUDGEMENT

This Appeal is directed against the order dated 31.7.1989 passed by the Chief Judicial Magistrate, Nadiad in Criminal Case No. 25 of 1985. There were five Accused in this criminal case. Accused No.1 being the concerned firm (pedhi) known as M/s. Pravinchandra Kanubhai & Brothers. Accused No.2 was Kanubhai Gokaldas Shah and Accused Nos. 3,4 and 5 were Pravinchandra Mohanlal Shah, Champaklal Gokaldas Shah and Rameshchandra Mohanlal Shah respectively. The Chief Judicial Magistrate, Nadiad by order dated 31.7.1989 held that concerned firm i.e. Accused No.1 was guilty of the offences under section 7(V) and Section 16 (1-A) (i) and accordingly the firm was fined a sum of Rs.1,000/-. Accused No.2 was also convicted for the offences under section 7(V) and Section 16(1-A)(i) of The prevention of Food Adulteration Act, 1954 and was sentenced to the punishment till the rising of the Court and fine of Rs.1,000/- and in default to undergo six months simple imprisonment. Accused Nos. 3,4 and 5 have been acquitted.

The State of Gujarat has preferred this Appeal under section 377 of the Code of Criminal Procedure for enhancement of the sentence and it has been submitted that the learned Magistrate ought to have imposed at least the minimum sentence prescribed under the Act but having convicted respondent [Accused No.2] namely Kanubhai Gokaldas Shah, he has been sentenced with the punishment only till rising of the Court with a fine of Rs.1,000/- and in default to undergo simple imprisonment for six months.

The concerned Food Inspector visited the pedhi of the partnership firm i.e. Accused No.1 and after giving

notice under Rule 12 purchased 750 gms. of the Wheat from the bags which were placed in the shop for sale to the customers and which were givenout to be in good condition. The Food Inspector prepared the sample in accordance with the rules and sent the same to the Public Analyst and also informed the concerned local health authority. The Public Analyst sent a report to the local health authority and since the sample was not found to be according to rules the sanction was accorded to file complaint against the Accused persons and thereafter the complaint was filed in the Court against the Accused persons for the offences under section 7(V) and section 16 (1-A)(i). For the aforesaid offences the plea of the Accused was recorded and the Accused persons denied the offence. After the trial in accordance with law the Chief Judicial Magistrate, Nadiad, having considered the evidence and the material available on record with reference to section 2(ia)(f),section 7(V) and section 16(1-A)(i) found the firm to be guilty for the offences under section 7(V) and section 16(1-A) (i) and imposed fine of Rs.1,000/- on the firm and Accused No.2 i.e. present respondent in this Appeal was also held to be guilty for the offence under section 7(V) and 16(1-A)(i) and was sentenced to the punishment till the rising of the Court with fine of Rs.1,000/- and in default to undergo simple imprisonment for a period of six months, while Accused Nos. 3, 4 and 5 were acquitted.

In this Appeal for enhancement of the sentence against the respondent (Accused No.2) Kanubhai Gokaldas Shah on the basis of the order dated 29.3.1990 passed by this Court admitting th

Kanubhai Gokaldas Shah - the respondent on 29.10.1990. On this notice the Court's order dated 29.3.1990 as "Admit Expedited" was mentioned and it is also mentioned in the notice that State had preferred Appeal as to why the punishment given to him may not be enhanced. This notice is available in the Appeal of the file on the back of which there are signatures of the respondent K.G.Shah under the writing " Vakeel Nee Jaroor Nathi".This duly

served notice was sent by the Sessions Judge, Nadiad to the Registrar of this Court vide his covering letter dated 19/21-11-1990 mentioning therein that the notices duly served upon the respondent is sent herewith and with further mention that the respondent does not require the help of the Pleader at the cost of the Government. On record there is also a report dated 14.11.1990 by the Food Inspector of the Municipality that service had been effected upon the respondent. There is also a letter

dated 16.11.1990 signed by respondent (Accused No.2) Kanubhai Gokaldas Shah as partner under the seal "for Pravinchandra Kanubhai & Brothers" with the mention of the number of this Appeal at the top and writing therein that he does not require help of any lawyer by the High Court and would defend himself in his own way which may be taken notice of. The contents of this letter dated 16.11.1990 are in Gujarati and what the letter seeks to convey has been put in translated version as above. It is, therefore, clear that the respondent has been duly served with the notice of this Appeal for enhancement of the sentence and it has also been mentioned in the notice of Appeal that the Appeal was for enhancement of the sentence. Despite the service of the notice of this Appeal for enhancement of the sentence in this case the respondent has chosen not to appear before this Court.

Whereas there is no Appeal either against the acquittal against Respondent Nos. 3,4 and 5 or against the conviction of the present respondent the only question which requires consideration by this Court is as to whether the order of sentence passed by the Chief Judicial Magistrate against the present Respondent has been passed in accordance with law or not.

Offences u/s.7(V) and Section 16(1-A)(i) with reference to Section 2(ia)(f), have been fully proved against the respondent. The report which was sent by the Director of the Central Food Laboratory in Form No.II under Rule 4(5) Exh.42 shows that it contained Organic, Inorganic, Foreign matter 36.72% insect damaged grains, 8.97% moisture and living insects present in abundance and it has been opined that the sample does not conform to the standards of food grains as per P.F.A.Rules, 1955 and the condition of seals on the container and the outer covering on receipt were intact. Mr.S.R.Divetia has placed reliance on a decision of the the Supreme Court reported in AIR 1988 SC Pg.1789 [Braham Dass Vs. State of H.P.] wherein the conviction was under section 2(ia)(f), Section 7 and 16 of the Prevention of Food Adulteration Act, 1954. It is clear that the minimum sentence provided under section 16(1-A)(i) is one year with a fine of Rs.2,000/-. Even for the offence under section 16(1)(a)(i) the punishment prescribed is, in addition to the penalty for which he may be liable under the provision of Section 6, with imprisonment and term which is not less than six months but which may extend to three years and with fine which shall not be less than Rs.1,000/-.

In the instant case, the discussion and the

findings as contained in the order dated 31.7.1980 passed by the Chief Judicial Magistrate shows the ingredients of section 2(ia)(f), Section 7(V) and Section 16(1-A)(i) and therefore the minimum sentence should have been the imprisonment for one year with a fine of Rs.2,000/-. Since the order dated 31.7.1989 contains Section written in Gujarati and it was not clear whether it refers to (a) or 'A' an exercise was made through available record with the help of the learned Addl. Public Prosecutor as to whether this 'a' written in the local language Gujarati refers to capital 'A' or small 'a' and after going through the details and the reasoning as given in the judgment, it is found that the offence is under Section 16 (1-A)(i) with reference to Section 2(ia)(f) and therefore, it has to be taken to be the case under section 16(1-A)(i). Although even under section 16(1)(a)(i) the sentence of one year with fine of Rs.2,000/- can be imposed because the punishment is imprisonment for a term of not less than six months extending to three years and the fine to be not less than Rs.1,000/-, I agree with the contentions of Mr.S.R.Divetia, learned Addl. Public Prosecutor that in fact the respondent deserves to be punished under section 16(1-A)(i) for which the minimum sentence is one year with a fine of Rs.2,000/- and accordingly the respondent (Accused No.2) Kanubhai Gokaldas Shah is hereby sentenced to one year simple imprisonment with fine of Rs.2,000/- and in default to pay the fine to further undergo one year's simple imprisonment under section 16(1-A)(i) read with section 7(V) of the Prevention of Food Adulteration Act. The order dated 31.7.1989 with regard to the sentence i.e. imprisonment till the rising of the Court with a fine of Rs.1,000/- and in default to undergo six months simple imprisonment passed by the Chief Judicial Magistrate, Nadiad is modified accordingly and the sentence is enhanced in the terms as aforesaid. The State Appeal for enhancement of sentence is allowed in the terms as aforesaid. The record and papers of this case may be sent back immediately to the Trial Court and Trial Court may take immediate steps in accordance with law so as to call upon the respondent Kanubhai Gokaldas Shah to serve the sentence and pay the fine as ordered by this Court.
